

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

CAP 111 ENTERPRISES LLC, 251 E. MAIN ST,  
LLC, 67 PURCHASE ST LLC, PUB STREET  
PLEASANTVILLE LLC, AND LOCALI  
KITCHEN & BAR LLC,

Individually and on Behalf of All Others Similarly  
Situated,

Plaintiffs,

-against-

MANHATTAN BEER DISTRIBUTORS, LLC,  
SIMON BERGSON, AND MICHAEL  
MCCARTHY,

Defendants.

No. 22-CV-1408 (CS)(AEK)

I, BARRY J. PEEK, Esq., declare the following under penalty of perjury and pursuant to 28 U.S.C. § 1746:

1. I am the Chief Executive Officer of Arden Claims Service LLC (“Arden”), the settlement administrator in the above-entitled action. My business address is 322 Main Street, Port Washington, New York 11050. My telephone number is (516) 944-2700.

2. Arden is a class action settlement administration company headquartered in Port Washington, New York. It was founded by individuals who have decades of experience in arbitration, mediation, and the practice of law, including class actions, and includes staff with years of experience in third-party claims administration, mail-house operations and call center support management.

3. Arden was jointly selected by the parties as the Claims Administrator and appointed by the Court on December 18, 2024, to administer the settlement in the above referenced action in

accordance with the terms of the Settlement Agreement and Release entered into on November 11, 2024 (the “Settlement”). Arden has been and, if the court grants the final approval of the Settlement will continue to be responsible for, providing settlement administration services.

### **NOTIFICATIONS TO THE CLASS**

4. On January 17, 2025, Arden received the Court-approved Notice (hereinafter, the “Notice Packet”) from Class Counsel. The Notice Packet advised Class Members of their right to opt-out from or object to the Settlement and the implications of each such action. The Notice Packet advised Class Members of applicable deadlines and other events including the date and location of the Fairness Hearing, and how Class Members could obtain additional information. A sample of the Notice Packet is attached hereto as Exhibit 1.

5. On January 13, 2025, Defendants’ counsel provided Arden with a list (hereinafter, the “Class List”) containing the name and last known mailing addresses of each of the 31,785 Class Members. Defendants have certified that the Class List data represents the most current and up to date information that Defendants have for Class Members.

6. The mailing addresses contained in the Class List were processed and updated utilizing the National Change of Address Database (“NCOA”) maintained by the United States Postal Service (“USPS”). The NCOA contains changes of address information filed with the USPS. If any individual on the Class List had filed a USPS change of address request, the address listed with the NCOA was utilized to mail the Notice Packet.

7. On February 3, 2025, the Notice Packet was mailed via First Class Mail to 15,204 Class Members contained in the Class List and emailed to 17,053 Class Members.

8. Arden received 3,602 Notice Packets back as undeliverable. Five (5) of the Notice Packets were returned by the USPS as undeliverable but with a forwarding address, and these were

re-mailed to the forwarding addresses received. 3,597 Notice Packets were returned without a forwarding address. Arden performed an advanced address search on these addresses by using LexisNexis Batch Search Solutions tool, a research tool that is commonly used in the settlement administration industry. Arden used the Class Member's name, previous address, and social security number, if one was available, to attempt to obtain a current address. Through the 3,597 advanced address searches performed, Arden was able to locate thirty-two (32) updated addresses and Arden promptly re-mailed Notice Packets to Class Members to those updated addresses. No Notice Packets were returned undelivered a second time. Accordingly, Arden was able to re-mail a total of thirty-seven (37) Notice Packets (including thirty-two (32) from advanced address searches, and five (5) to forwarding addresses).

9. Ultimately, the number of Class Members who received Notice Packets was 28,220 out of the class list of 31,785. 3,565 class members were not located. Ultimately, notice reached approximately 89% of Class Members.

10. The Federal Judicial Center's Class Action Notice and Claims Process Checklist states that notice is reasonable when it reaches at least 70–95% of the class, and the median class action notice reaches 87% of the class.<sup>1</sup> The reach of notice here was therefore reasonable and exceeded the median identified by the FJC. *Id.*

### **EXCLUSIONS AND OBJECTIONS**

11. The deadline for Class Members to opt-out or object to the Settlement is April 4, 2025.

12. As of this date, Arden has not received any requests for exclusion from the Settlement.

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<sup>1</sup> Available at <https://www.fjc.gov/content/judges-class-action-notice-and-claims-process-checklist-and-plain-language-guide-0>.

13. As of this date, Arden has not received any objections to the Settlement.

**BREAKDOWN OF SETTLEMENT FUND**

14. Payments pursuant to the Settlement are, subject to court-approval, to be allocated as follows:

<b>Gross Settlement Fund:</b>	\$ 5,750,000.00
Less Attorney's Fees & Costs:	\$ 1,916,666.66
Less Class Counsel's Expenses:	\$ 88,207.63
Less Claims Administrator Fees:	\$ 115,000.00
Less Plaintiff Service Payments:	\$ 25,000.00
Less Reserve Fund:	\$ 50,000.00
<b>NET SETTLEMENT FUND</b>	<b>\$ 3,555,125.71</b>

15. As of this date, there are 31,785 Class Members eligible to receive payment as the Settlement was an opt-out settlement and Class Members are eligible if they did not opt-out.

**ADMINISTRATION COSTS**

16. Arden's fees and expenses for services rendered in connection with the administration of this Settlement including fees incurred and anticipated future costs for completion of the administration are \$115,000. Arden will continue its work on this matter by distributing checks to each Class Member, responding to Class Member inquiries, reissuing Class Member payments, correcting errors and omissions, and administering the reserve fund.

17. I declare under penalty of perjury under the laws of the State of New York that the foregoing is true and correct. Executed this 3<sup>rd</sup> day of April 2025, at Port Washington, New York.

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DATED: April 3, 2025

A handwritten signature in black ink, appearing to read "B. J. Peek", is written over a horizontal line.

Barry J. Peek, Esq.

# EXHIBIT 1

**LEGAL NOTICE**

**IF YOU WERE A MANHATTAN BEER CUSTOMER BETWEEN FEBRUARY 18, 2016 AND MAY 13, 2024, YOU ARE ELIGIBLE FOR A PAYMENT FROM A CLASS ACTION SETTLEMENT.**

**YOUR PAYMENT IS ESTIMATED AT .**

**A CHECK WILL BE MAILED TO YOU IF THE SETTLEMENT IS APPROVED. YOU DO NOT NEED TO DO ANYTHING TO GET A PAYMENT.**

This is a Court-approved Legal Notice. This is not an advertisement. You are not being sued.

A Settlement has been reached in a proposed class action against Manhattan Beer Distributors, LLC (“Manhattan Beer”). The case alleges that Manhattan Beer improperly invoiced customers for a cardboard mother carton deposit in violation of applicable law. Manhattan Beer denies these allegations and any wrongdoing and maintains that its conduct was at all times lawful.

The lawyers in the case estimate that you could receive about \_\_\_\_\_ from the Settlement.

**Who is included?** Manhattan Beer’s records show that you are likely included. You are included if you were a Manhattan Beer customer who paid \$0.10 for cardboard mother carton deposits that were not redeemed or refunded between February 18, 2016 and May 13, 2024.

For more information, please go to **MBDCardboardSettlement.com**

**What can I get?** The lawyers in this case estimate that you could receive approximately \_\_\_\_\_ if the Court approves the settlement as proposed. This amount is an estimate. Your payment amount may be different. The payment amount will depend on a number of factors including whether you are affiliated with multiple stores that will receive payment under the settlement, whether full settlement terms are approved, and whether Manhattan Beer’s records of your past cardboard mother carton deposit payments are accurate.

**How do I get my money?** You don’t have to do anything to get your money. If the Court approves the settlement, you will be mailed a check.

**What does the Settlement provide?** Under the terms of the Settlement, Manhattan Beer will pay \$5,750,000 to establish a Settlement Fund.

Please visit **MBDCardboardSettlement.com** for more information.

**Do I have a lawyer in the case?** If you are receiving this Notice, Manhattan Beer’s records show you are likely included in the Class and therefore have a lawyer in this case. The Court appointed the law firm Wittels McInturff Palikovic as “Class Counsel” to represent the Class Members in this case. You do not have to pay Class Counsel or anyone else to participate. If you want to be represented by your own lawyer, you may hire one at your own expense.

**Your other options.** If you are included in the Settlement and do nothing, your rights will be affected. If you don’t want to be legally bound by the Settlement, you must exclude yourself from it by April 4, 2025. Unless you exclude yourself, you won’t be able to sue or continue to sue Manhattan Beer for any claim made in this lawsuit or released by the Settlement Agreement. If you exclude yourself, you won’t receive payment. If you stay in the Settlement (*i.e.*, don’t exclude yourself), you may object to it or ask for permission for you or your lawyer to appear and speak at the Final Approval Hearing – at your own cost – but you don’t have to. Objections and requests to appear are due by April 4, 2025. More information about these options is available at **MBDCardboardSettlement.com**.

**When will the judge consider the proposed settlement?** The Court will hold the Final Approval Hearing at 10:15 am on April 24, 2025 in Courtroom 621 (6<sup>th</sup> Floor) of the United States Courthouse, 300 Quarropas Street, New York, NY 10601. At the Final Approval Hearing, the Court will consider whether the Settlement and its terms are fair, reasonable, and adequate. The date of the Final Approval Hearing may change without further notice, and Class Members should check MBDCardboardSettlement.com to confirm that the date has not changed.

This Notice is only a summary.

For more information visit **MBDCardboardSettlement.com**.

**If you were a Manhattan Beer customer, you could get a payment from a class action settlement.**



**Manhattan Beer Settlement Administrator**  
**PO Box 1015**  
**Port Washington, NY 11050**

*Return Service Requested*

FIRST-CLASS MAIL  
U.S. POSTAGE PAID  
MILWAUKEE, WI  
PERMIT NO. 3780

**Notice to customers of Manhattan Beer Distributors, LLC**

**If you were a Manhattan Beer customer, you could get a payment from a class action settlement.**